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सं. 36] नई दिल्ली, नवम्बर 23—नवम्बर 29, 2008, शनिवार/अग्रहायण 2—अग्रहायण 8, 1930
No. 36] NEW DELHI, NOVEMBER 23—NOVEMBER 29, 2008, SATURDAY/AGRAHAYANA 2—AGRAHAYANA 8, 1930

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृष्ठक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)
PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासनों को छोड़कर) द्वारा जारी किए आदेश और अधिसूचनाएं
Orders and Notifications issued by Central Authorities (other than the Administrations of Union Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 23 सितम्बर, 2008

आ. अ. 90.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग, राजस्थान राज्य से राज्य सभा के सदस्यों के रूप में श्री रामा प्रसाद गोयंका एवं अन्य के निर्वाचन को प्रश्नगत करते हुए श्री आर. डी. शर्मा द्वारा दाखिल की गई 2000 की निर्वाचन याचिका संख्या 1 में जयपुर स्थित राजस्थान उच्च न्यायालय के दिनांक 12 दिसम्बर, 2003 के आदेश को, एतद्वारा प्रकाशित करता है।

(आदेश इस अधिसूचना के अंग्रेजी भाग में छपा है)

[सं. 82/रा.स.-राज./1/2000/2008]

आदेश से,
के. अजय कुमार, सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 23rd September, 2008

O. N. 90.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the order of the High Court of Rajasthan at Jaipur dated 12th December, 2003 in Election Petition No. 1 of 2000 filed by Shri R. D. Sharma calling in question the election of Shri Rama Prasad Goenka & others as the Members of the Council of States from the State of Rajasthan.

IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN AT JAIPUR BENCH, JAIPUR

JUDGMENT

S. B. Election Petition No. 01/2000

R. D. Sharma Vs. Shri Rama Prasad Goenka & Ors.

Date of Order : 12th December, 2003

PRESENT**HON'BLE MR. JUSTICE K. A. RATHORE**

Mr. Bajrang Lal Sharma Sr. Adv. with
 Ms. Raj Sharma, for the petitioner
 Mr. Milon K. Banerjee, Sr. Adv. with
 Mr. Alok Sharma,
 Mr. Dhruv Agarwal,
 Mr. R. N. Jhunjhunwala &
 Mr. Ajay Bhargava for respondent No. 1
 Mr. G. S. Bapna for respondent No. 2.

REPORTABLE :

By this election petition, the petitioner Mr. R. D. Sharma raised the dispute regarding the election of three Members of the Council of States (Rajya Sabha).

The biennial election to the Council of States to fill 3 seats therein from Rajasthan were notified to be held by the Election Commission of India. Shri Jaswant Singh Mali, Secretary, Rajasthan Legislative Assembly was appointed Returning Officer to conduct the said elections. Shri Mahesh Singh Tanwar the Special Secretary, Rajasthan Legislative Assembly was appointed as Assistant Returning Officer.

The Rajasthan Assembly has a strength of 200 MLAs and against three seats of the Rajya Sabha there were four candidates. 198 MLAs voted, of which one vote was disqualified. Out of 197 votes the petitioner received 45, the respondent No. 1 received 52 and the respondent Nos. 2 and 3 received 50 votes each.

The main ground to challenge the election of respondent No. 1 by the petitioner is that there was violation of secrecy during the casting of the votes as the MLAs disclosed their vote to the Congress Deputy Chief Whip, who was also an Election Agent and was present during voting and that six other MLAs were wrongly allowed by the Returning Officer to take along companions on the ground of being a blind or infirm elector.

Present election petition was earlier assigned to Hon'ble Mr. Justice P. P. Naolekar. Due to elevation of Hon'ble Mr. Justice P. P. Naolekar as Chief Justice of High Court of Guwahati, this election petition is assigned to me on 5-7-2002.

Learned counsel for respondent No. 1 Mr. Milon K. Banerjee Sr. Adv. with Mr. Alok Sharma has raised preliminary objections regarding maintainability of this election petition. The arguments were heard on the preliminary objection.

Learned counsel for respondent submits that this election petition filed by the petitioner is vague, speculative and founded on conjectures as the petitioner has not disclosed the source of information for averments made in

paragraphs 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 37 and 38 of the Petition. The main challenge to the election of the respondent No. 1 is not based on substantial grounds and the grounds for declaring an election to be void are contained in Section 100 of the Representation of People Act, 1951. The election petition must aver that, on one or more grounds contained in that section, the election of the returned candidate should be declared void. The only averment in the election petition which may be remotely regarded as a ground for declaring the election as void is contained in paragraph 33.

It is also contended on behalf of the respondent No. 1 that the improper inception of any vote or the reception of any vote which is void would not, by itself, be a ground for declaring the election of the returned candidate to be void. It must be pleaded and proved that by such improper reception of any vote or reception of any vote which is void, "the result of the election in so far as it concerns a returned candidate has been materially affected" and such pleading or averment is lacking in the present election petition. The averments made in paragraphs 13, 14, 24 and 33 do not give a cause of action and do not disclose any ground for maintaining an election petition.

Learned counsel for the respondent No. 1 also submitted that the averment in paragraph 34 of the election petition that "the result of the election of the returned candidates is bound to be materially affected" does not satisfy the mandatory requirements of Section 100 of the Act as the petitioner has failed to prove that the result of the election in so far as it concerns a returned candidate has been materially affected. In the election held on 29-3-2000 there were three returned candidates. The result in respect of each of the three returned candidates is a separate result.

Learned counsel for the respondent No. 1 further submits that there is no concise statement of material facts as required under the provisions of Section 83(1)(a) of the Representation of the people Act. The law requires that failure to plead even a single material fact would amount to contravention of Section 83(1)(a). Material facts not having been pleaded, the Election Petition deserves to be rejected. To take one example, there is failure even to plead that the result of the election has been materially affected, as required under Section 100(1)(d). Also, the so-called pleading in paragraph 33 of the bare language of the statute is not pleading of any material fact. In any event, paragraph 33 not being verified at all cannot be looked into. Reading the Election Petition as a whole, it is based on some nebulous concept of secrecy (which is the root of the allegations) that in law does not exist, and the Petition has not attempted to establish any nexus between the so-called allegation of violation of secrecy and the alleged improper reception of votes or reception of votes that are void. What could perhaps have been considered an alleged corrupt

practice under Section 123(2), the undue influence of direct or indirect interference or attempted/interference with the free exercise of any electoral right, has clearly, and possibly, deliberately, not been pleaded.

The Election Petition is also not maintainable for violation of the provisions of Section 83(1)(c) regarding verification. There is no verification at all of the vital paragraph 33 of the Petition and there is no proper verification of other paragraphs which rely upon information without disclosing source.

The petitioner has prayed that inspection of records be granted. However, the law is well settled that until the conditions of Section 83 about material facts are fulfilled, a prayer for inspection of records obviously for the purpose of a fishing and roving investigation is not to be allowed.

Learned counsel for the respondent No. 1 also referred relevant provisions of the Representation of the People Act, 1951 more particularly Section 29-A, Section 52, Section 61-A, Section 81, Section 83, Section 86, Section 87, Section 94, Section 100, Section 128, Section 169.

Besides the Sections he also referred the relevant rules of the Conduct of Election Rules, 1961 namely Rule 32, Rule 39, Rule 40, Rule 54, Rule 94A. He also drawn my attention towards the form attached to the rules namely Form 2C, Form 14A, Form 25.

The provisions of order VII Rule 11 of the Civil Procedure Code is also referred and more particularly reliance is placed on Mulla's Civil Procedure Code, 1996, Vol. 2, wherein at pages 1241-1244, summarises the law that (1) an "election Petition which does not disclose cause of action can be rejected". (2) "The Court has not only the power but also the imperative duty to strike out all pleadings in appropriate cases under Order VI rule 16 and to reject the petition under Order VII Rule 11 if no cause of action remains" (3) "An election petition which does not disclose any cause of action and which is likely to prove abortive, shall not be allowed to engage the time of Court or act as a Sword of Damocles hanging over the head of the returned candidate deterring him to discharge the duties to the nation." (4) "If the material facts so as to constitute a complete cause of action are not select, such a petition is liable to be dismissed even though Section 86(1) of the Representation of the People Act does not say so. That can be done on the basis of Section 87, read with Order VII Rule 11 of the Code of Civil Procedure". (5) "An election Petition can be dismissed or rejected under Order VII Rule 11 if there is an objection going to the root of the matter."

Regrading maintainability of this election petition learned counsel for the respondent No. 1 referred the following case law :

1. Navrang Singh Vs. Bhanwar Singh & Ors. reported in 68 ELR 1.

2. Ram Sevak Yadav Vs. Hussain Kamil Kidwai & Ors. reported in AIR 1964 SC 1249.

3. Samant N. Balakrishna Vs. George Fernandez & Ors. reported in AIR 1969 SC 1201.

4. Gomathi Ammal & Another Vs. H. H. Srimoolam Thirumal Sethu Parvathi Bhai reported in AIR 1953 Travancore-Cochin 524.

5. Dhartipakar Madan Lal Agarwal Vs. Rajiv Gandhi reported in 1987 (3) SCR 369.

6. Azhar Hussain Vs. Rajiv Gandhi reported in AIR 1986 SC 1253.

7. Samar Singh Vs. Kedar Nath & Ors. reported in AIR 1987 SC 1926.

8. K. K. Somanathan Vs. K. K. Ramachandran Master & Ors. reported in AIR 1988 Kerala 259.

9. V. Narayanaswamy Vs. C. V. Thirunavukkarasu reported in 2000(2) SCC 294 and

10. Dr. Jagjit Singh Vs. Giani Kartar Singh & Ors. reported in AIR 1966 SC 773.

Learned counsel for the respondent No. 1 also referred the following case law in support of the grounds raised by him :

1. Santosh Yadav Vs. Narender Singh reported in Judgments Today, 2001 (9) SC 392.

2. Shri Baburao Patel & Ors. Vs. Dr. Zakir Hussain & Ors. reported in 1968 (2) SCR 135.

3. N. Sankara Reddi Vs. Yashoda Reddi reported in 13 Election Law Reports 34.

4. Narendra Bhikahi Darade Vs. Kalyanrao Jaywantrao Patil reported in AIR 2000 Bom. 362.

5. Ram Charan Vs. Bhola Shankar Maurya reported in AIR 1987 All. 134.

6. S. Raghbir Singh Gill Vs. S. Gurcharan Singh Tohra reported in AIR 1980 SC 1362.

7. Rajpal Singh Vs. Om Prakash Garg & Ors. reported in 41 Election Law Reports page 221.

8. The Central Bank of India & Ors. Vs. Their Workmen reported in AIR 1960 SC 12.

9. Babaji Kondaji Garad Vs. Nasik Merchants reported in AIR 1984 SC 192.

10. South Newington Municipal Election Petition - Lewis Vs. Shepperdson reported in 1948 (2) All E. R. 503.

In response to the arguments that the Petitioner did not disclose the source of information, Learned counsel for the Petitioner Mr. Bajrang Lal Sharma Sr. Adv. submits that it is necessary to disclose the source of information as

the same is not required by any provision of law. It was only enough for the Petitioner to say that the information mentioned in the election petition is true.

He further submits that it was not necessary for him to disclose the source of information and on that ground verification of Election Petition of Affidavit in support of Election Petition cannot be said to be defective and on this ground Election Petition cannot be dismissed. Affidavit in support of Election Petition is in form No. 25 as required under Rule 94-A read with proviso to sub-section (1) of Section 83 of the Act which does not provide that source of information should be disclosed. Mr. Sharma also submits that the affidavit was filed by taking abandon caution since allegations of any corrupt practice has not been mentioned in the election petition, therefore, affidavit is not even required.

In reply to the submissions made on behalf of the respondents regarding maintainability of the election petition that the petitioner failed to mention the relevant provisions of law, it is submitted that there was no requirement of law to state the provisions of law in Election Petition and further the specific grounds have been raised by the petitioner to challenge the election in question on the grounds of improper reception of void votes.

It is further submitted that in para No. 33 of the election petition inadvertently due to the typographical error Section 100 sub-section 2 Clause 3 has been typed in place of Section 100 sub-section (1) Clause (d) sub-clause (iii) of the Representation of People Act, 1951 and it does not affect in any manner to the merit of Election Petition and on this ground Election Petition cannot be dismissed.

Mr. Sharma further submits that the election petitioner has to be read as a whole and not in piece meal. There are specific material facts with respect to improper reception of void votes. Specific averments had been mentioned in the election petition to show that the result of election of respondent No. 1 has been materially affected.

In the election petition the allegation in several paragraphs including 13, 14, 24 and 33 of the Election Petition with respect to violation of secrecy of voting are absolutely necessary to the election petition and these allegations furnish adequate cause of action and disclose adequate ground for maintaining the election petition in question.

Mr. Sharma read over the para 34 of the election petition wherein it was pleaded that on account of reception of 8 void votes the result of the election so far as it concerns the respondent No. 1 has been materially affected. Thus the petition is quite maintainable against the respondent No. 1 and the same cannot be dismissed in limine against the respondent No. 1 on this count alone.

The respondent No. 1 also filed an application under Order 6 of Rule 16 of the Code of Civil Procedure 1908 with the prayer to strike out the pleading in paragraphs 7, 10, 13, 14, 24, 33, 34 and 40 of the Election Petition on the ground that under Section 80 of the Representation of the People Act, 1951 no election shall be called in question except by an election petition presented in accordance with the provisions of Part-VI of the Act. Further Section 83 stipulates what shall be the contents of the election petition and clause (a) of sub-section (1) provides that the petition shall contain a concise statement of the material facts on which the Petitioner relies. Clause (c) of the said sub-section (1) provides that the petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure. Furthermore, the ground for declaring an election to be void are contained in Section 100 of the Act and, in so far as it concerns this Section 100 (1)(d)(iii) provides that the election can be declared void only if the High Court is of the opinion that the result of the election, in so far as it concerns a returned candidate, has been materially affected by the improper reception of any vote or the reception of any vote which is void. Reading these provisions together, it would be clear that if the above mentioned election petition does not satisfy the aforesaid requirements, the whole election petition would be struck out as not disclosing a cause of action.

It was also contended on behalf of the respondents that the contents of the paragraphs 7 and 10 of the petition are also liable to be struck out for the reason that it is an acknowledged fact that candidates for election to the council of States are set up by political parties. Form 2-C appended to the Conduct of Election Rules, 1961 is the prescribed Form of Nomination Paper for election to the Council of States and that form itself requires a candidate to declare the name of the political party which has set him up as a candidate.

With regard to the paragraph 13 and 14 of the petition, the allegations made in the aforesaid paragraphs are imaginary and farfetched and even assuming that in one case the ballot paper had accidentally dropped and had been picked up by the voter and put in ballot box, the allegations do not furnish sufficient ground to challenge the election of the respondent and also not disclose any cause of action to maintain the election petition.

It is submitted that the case of the petitioner in para No. 13 and 14 of the election petition is that the Returning Officer improperly accepted those votes though said votes were liable to be rejected as secrecy of votes have been violated. It is also submitted that the ballot paper has been intentionally dropped with a view to show the mark on the ballot paper to Shri Mahesh Joshi.

Mr. Sharma further submitted that improper reception of votes and reception of votes which were void is a ground for challenging the election as provide in Section

100(1)(d)(iii) of the Representation of People Act, 1951. there is no requirement of law to plead the law in pleadings. However, an inadvertent typographical error does not affect the merit of the case or entail the dismissal of election petition. There are specific pleadings in the para No. 34 of the election petition that how the result of the election in question as so far as it concerns the returned candidates including the respondent No. 1 has been materially affected.

Para No. 34 of the election petition discloses the cause of action that how the result of election in respect of respondent No. 1 has been materially affected.

On the point of secrecy of ballot paper the petitioner referred the following judgments of Hon'ble Supreme Court:

Jagjit Singh Vs. Kartar Singh reported in AIR 1966 SC 773.

Chandar Singh Vs. Ch. Shiv Ram Verma & Ors. reported in AIR 1975 SC 403.

S. Baldev Singh Vs. Teja Singh Swatantra & Ors. reported in AIR 1975 SC 693.

With regard to the preliminary objections raised by the respondents that petition filed by the petitioner is vague speculative and founded on conjectures and the petitioner has not disclosed the source of information for averments made in the petition, learned counsel for the petitioner submits that petition to be read material facts and material particulars as a whole and in support of his arguments he placed reliance on the following judgments:

Udhav Singh Vs. Madhav Rao Scindia reported in AIR 1976 SC 744.

Mohan Vs. Bhairon Singh Shekhawat reported in 1996 SC 679.

Mahendra Pal Vs. Ram Dass Malenger and Others reported in 2000(1) SCC 261.

After placing reliance on the aforesaid judgments, he also placed reliance on the judgment of Mahan Rawala Vs. Damodar Tatyaba & Ors. in support of his contention that cause of action regarding filing of this present petition is made available to the petitioner.

Heard the arguments on the preliminary objections regarding maintainability of the present election petition.

First of all I like to refer the relevant provisions of Representation of the People Act.

Section 81(1) deals with the presentation of petitions. An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101 to the (High Court) by any candidate at such election or any elector (within forty five days from, but not earlier than the date

of election of the returned candidate or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates).

Section 83 speaks about the contents of petition, which is as follows:

(1) An election petition—(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleged including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

By bare perusal of the Section 81 and perusal of the contents of the election petition, the election petition has been filed by the petitioner on several grounds. It may be presented on one or more of the grounds specified in sub-section (1) of Section 100 as under Section (1) grounds for declaration of the election to be void should be specified.

Sub-section (1)(d) of Section 100 is relevant to resolve the present controversy. As per sub-section (1)(d) of Section 100 the petition can be filed on the ground that the result of the election, in so far as it concerns a returned candidate, has been materially affected. Further sub-section (iii) of sub-clause (d) is relevant, which speaks about the improper reception, refusal or rejection of any vote or the reception of any vote which is void.

For the purposes of deciding the preliminary objections as pointed out by learned counsel for the respondents, the contents of petition requires consideration whether the contents of the petition are in accordance with Section 83 of Representation of the People act or not. As evident by the perusal of Section 83 election petition shall contain a concise statement of the material facts on which the petitioner relies.

As per sub-section (1)(b) of Section 83 the petitioner should set forth full particulars of any corrupt practice that the petitioner alleged including as a full a statement as possible of the names of the parties alleged to have

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committed such corrupt practice and the date and place of the commission of each such practice.

Herein the instant case since the petitioner has not made any statement regarding corrupt practice, therefore, the provisions of sub-section 1(b) are not attracted.

As per sub-section 1(c) the petition should be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, for the verification of pleadings.

As per sub-section 2 of Section 83 any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition verified.

To resolve the present controversy relevant sub-clause is only 1(a)(b) and 2 of Section 83.

Upon careful perusal of the election petition though the facts, which are narrated in the election petition are in sequence, concise statements of the facts are therein the petition on which the petitioner wants to rely upon. But the petitioner failed to make out the grounds for declaring the election to be void as per sub-section 1(d) of Section 100 to establish this aspect that the result of the election has been materially affected. The petitioner has failed to plead that the result of election has been materially affected as required under Section 100(1)(d) and only pleading in paragraph 33 was with regard to this effect but the same is not verified as per Section 83(1)(c) and 83(2). Vital paragraph 33 of the petition has not been verified as per Section 83(1)(c) and the information, which was given in paragraph also does not disclose the source of information. Learned counsel for the respondents relies upon the case of Navrang Singh Vs. Bhanwar Singh & Ors. reported in LXVIII ELR 1 wherein the petitioner challenged the election of the first respondent to the Rajasthan Legislative Assembly from Nawalgarh Constituency held in May 1980, alleging inter alia, that irregularities and illegalities were committed during the counting of votes. The first respondent raised preliminary objections to the maintainability of the petition on the ground that the petition does not contain material facts regarding the illegalities and irregularities alleged and as such does not disclose a cause of action.

This Court has considered that the requirement with regard to concise statement of material facts contained in Section 83(1)(a) of the Act is a general requirement applicable to election petitions including an election petition wherein the election is challenged on the ground of irregularities and illegality committed during the course of counting of votes and if it does not contain a concise statement of material facts, it is liable to be dismissed summarily.

This Court has passed this order after placing reliance upon the following judgments :

1. Samant N. Balakrishna Vs. George Fernandez (AIR 1969 SC 1201)
2. Hardwari Lal Vs. Kanwal Singh (AIR 1972 SC 536)
3. Udhav Singh Vs. M. R. Scindia (AIR 1976 SC 744)
4. N. Narayanan Vs. S. Semmalai (AIR 1980 SC 206)
5. Deep Chand Vs. Jainarain (1977 RLN 466)
6. Ramdeva Vs. Paras Ram [E. P. No. 1 of 1977 (Rajasthan)]
7. Rajendra Singh Vs. Prem Singh [E. P. No. 2 of 1980 (Rajasthan)]

I am also carefully examined the judgment rendered by Hon'ble Supreme Court in the case of Samant N. Balakrishna etc. Vs. George Fernandez & Ors. etc. wherein the Hon'ble Supreme Court has held that omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. As the compliance of Section 83 of the Act is mandatory the entire and complete cause of action must be stated in the petition in the shape of material facts—Function of particulars is to give necessary information to present full picture of the cause of action.

I have also gone through the judgment of Hon'ble Supreme Court in the case of Dhartiakar Madan Lal Agarwal Vs. Rajiv Gandhi wherein the Hon'ble Supreme Court was of the view that cause of action in questioning the validity of election must relate to the grounds specified in Section 100 of the Act. If the allegations contained in the petition do not set out grounds of challenge as contemplated by Section 100 of the Act and if the allegations do not conform to the requirement of Section 81 and 83 of the Act, the pleadings are liable to be struck off and the election petition is liable to be rejected under Order VII Rule 11.

In the instant case also learned counsel for the respondents has moved an application under Order 6 Rule 16 of CPC with the prayer to strike out the pleadings in paragraphs 7, 10, 13, 14, 24, 33 and 40 of the Election Petition for non-compliance of the provisions of Section 83.

Learned counsel for the respondents has also placed reliance on the judgment reported in AIR 1986 Supreme Court 1253 (Azhar Hussain Vs. Rajiv Gandhi). In this case also the Hon'ble Supreme Court reiterated the earlier view taken in the case of Dhartiakar Madan Lal Agarwal Vs. Rajiv Gandhi (Supra) and held that non-compliance of provisions of Section 83 and failure to incorporate in

petition material facts and particulars relating to alleged corrupt practice the petition can be summarily dismissed if it does not furnish cause of action.

Upon careful examination of the judgment of *Udhav Singh Vs. Madhav Rao Scindia* reported in AIR 1976 SC 744 referred by the petitioner wherein the Hon'ble Supreme Court has given the meaning of material facts and particulars as required under Section 83.

All the primary facts which must be proved at the trial by a party to establish the existence of a cause of action or his defence, are "material facts". In the context of a charge of corrupt practice, "material facts" would mean all the basic facts constituting the ingredients of the particular corrupt practice alleged, which the petitioner is bound to substantiate before he can succeed on that charge. Whether in an election petition, a particular fact is material or not, and as such required to be pleaded is a question which depends on the nature of the charge levelled, the ground relied upon and the special circumstances of the case. In short, all those facts which are essential to clothe the petitioner with a complete cause of action, are "material facts" which must be pleaded and failure to plead even a single material fact amounts to disobedience of the mandate of Section 83(1)(a).

In the case of *Mohan Vs. Bhairon Singh Shekhawat* reported in 1996 (7) SCC 679 the Hon'ble Supreme Court has held that the averment contained in paragraph 8 (a) of the Election Petition also are not liable to be struck out under Order VI Rule 16 CPC. Obviously, these averments also have to be read together with the aforesaid Annexure 'A' and Annexure 1 since one of the speeches pleaded in paragraph 8(a) is in the meeting of 27-10-93 at Falna as mentioned therein.

In the case of *Mahendra Pal Vs. Ram Dass Malanger and Others* upon which the petitioner placed reliance wherein the Hon'ble Supreme Court has held that pleadings to be read as a whole together from the tenor or substance the intention of the party, it is the substance and not merely the form, which is required to be looked into for construing the pleadings.

In the case of *Mohan Rawale Vs. Damdar Tatyaba & Ors.*, the same analogy has been drawn by the Hon'ble Supreme Court where reference to material facts and documents is made in the petition without pleading contents thereof, copies of the documents would form an integral part of the petition, non-supply of which would amount to non-furnishing of true copy of the election petition and entail dismissal of the petition.

As defective verification is pointed out by the respondents, the petitioner placed reliance in support of his contention in the judgment reported in AIR 1991 SC 1557 wherein it has been held that mere defect in the verification of the election petition is not fatal to the

maintainability of the petition and the petitioner cannot be thrown out solely on that ground. Since Section 83 is not one of three provisions mentioned in Section 86 (1), ordinarily it cannot be construed as mandatory unless verification is shown to be an integral part of the petition under Section 81.

Same view has been taken by the Supreme Court in the case of *H. D. Revanna Vs. G. Upmaswamy Gowda & Ors.* reported in 1999 (2) SCC 217. After perusal of the ratio decided by the Hon'ble Supreme Court and this Court in the aforesaid judgments referred hereinabove, the present petition is filed by the petitioner as per the requirement of Section 83 of the Act as the concise statement of material facts on which the petitioner relies has been made in the election petition, therefore this petition cannot be thrown on the ground that the compliance of Section 83 of the Act has not been made by the petitioner.

Now I have to examine whether the petitioner is able to formulate the ground for declaring the election to be void as per the requirement of Section 100 or not. As per Section 100 of the Representation of People Act, 1951 each election petition contains a specific ground for declaring election to be void. As in the instant case sub-section 1(d) of Section 100 is relevant and as per sub-section 1(d) the result of the election, in so far as it concerns a returned candidate, has been materially affected—(i) by the improper acceptance or any nomination, or (ii) by any corrupt practice committed in the interests of the returned candidate or (iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or (iv) by any non-compliance with provisions of the Constitution or of this Act or of any rules or orders made under this Act.

Since in the petition no allegation with regard to the corrupt practice has been alleged by the petitioner and only alleged that secrecy has not been maintained as the petitioner has categorically stated in para 34 of the election petition that out of 197 votes which were counted as valid and as many as 8 votes of Sarva Shri Bhikha Bhai Bheel, Nanu Ram Kakralia, Kishan Motwani, Mohan Lal Chittoria, Mohan Lal Barupal and Abdul Hadi and Bhanwar Lal, Chandan Mal if are rejected being violative of the secrecy clause then the election of the returned candidate is bound to be materially affected.

So far as the assistance provided by the Returning Officer, the relevant rule is Rule 32 of the Conduct of Election Rules, 1961. As per rule 32(f) a person accompanying a blind or infirm elector, who cannot move without help, the Presiding Officer can provide the companion inside the polling station to help for voting and it is the discretion of the Presiding Officer to permit the companion looking to the physical condition of the elector.

For maintaining the secrecy the relevant rule is 39. Rule 39 speaks about the maintenance of secrecy of voting by electors within polling station. Rule 39 is herewith reproduced as under :

Maintenance of secrecy of voting by electors within polling station and voting procedure—(1) Every elector to whom a ballot paper has been issued under rule 38 or under any other provisions of these rules, shall maintain secrecy of voting within the polling station and for that purpose observe the voting procedure hereinafter laid down.

(2) The elector on receiving the ballot paper shall :

- (a) proceed to one of the voting compartments;
- (b) there make a mark on the ballot paper with the instrument supplied for the purpose on or near the symbol of the candidate for whom he intends to vote;
- (c) fold the ballot paper so as to conceal his vote;
- (d) if required, show to the presiding officer the distinguishing mark on the ballot paper;
- (e) insert the folded ballot paper into the ballot box; and
- (f) quit the polling station.

(3) Every elector shall vote without undue delay.

(4) No elector shall be allowed to enter a voting compartment when another elector is inside it.

(5) If an elector to whom a ballot paper has been issued, refused after warning given by the Presiding Officer, to observe the procedure as laid down in sub-rule (2), the ballot paper issued to him shall, whether he has recorded his vote thereon or not, be taken back from him by the Presiding Officer or a Polling Officer under the direction of the Presiding Officer.

(6) After the ballot paper has been taken back the Presiding Officer shall record on its back the words "Cancelled; voting procedure violated" and put his signature below those words.

(7) All the ballot papers on which the words "Cancelled; voting procedure violated" are recorded, shall be kept in a separate cover which shall bear on its face the words "Ballot papers : voting procedure violated".

(8) Without prejudice to any other penalty to which an elector, from whom a ballot paper has been taken back under sub-rule (5), may be liable, the vote, if any, recorded on such ballot paper shall not be counted.

In case of violation of Rule 39, the Presiding Officer can warn such elector and after giving warning the Presiding Officer can cancel such vote and as evident that

after warning the vote of Shri Durga Prasad Agarwal was rejected during the course of polling itself on the ground of violating the instructions issued by the Presiding Officer. The Presiding Officer in view of Rule 40 after having satisfied that 8 electors are physically infirm and cannot make a mark without assistance, the Presiding Officer permit the elector to take with him a companion.

It is also not the case of the petitioner that before polling as per Rule 54 the Returning Officer has not read out the provisions of Section 128. In the instant case the Presiding Officer read over the provisions of Section 128 regarding maintenance of secrecy of voting.

As per sub-section (1) of Section 128 every officer, clerk, agent or other person who performs any duty in connection with the regarding or counting of votes at an election shall maintain, and aid in maintaining, the secrecy of the voting and shall not (except for same purpose authorized by or under any law) communicate to any person any information calculated to violate such secrecy.

As per sub-section (2) of Section 128 any person who contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to three months or with fine or with both.

Herein the present matter during the election it was alleged by the petitioner that 8 votes as mentioned in para No. 34 has violated the provisions of secrecy as they have shown their ballots to Deputy Chief Whip of the Congress Party and if 8 votes were rejected by the Presiding Officer the election of returned candidate is bound to be materially affected.

Petitioner obtained 45 votes and respondent Nos. 1, 2 and 3 secured 52, 50 and 50 votes respectively. Since the number of votes obtained by respondent Nos. 2 and 3 were equal, therefore, the Returning Officer decided between them second and third members by draw of lots.

The petitioner is unable to make out any ground as stipulated under section 100 by which the result of the election insofar as it concerned a returned candidate has been materially affected. And the case of the petitioner does not fall within the ambit of Section 100 of the Act as it is not the case of the petitioner that by the improper acceptance or any nomination or by any corrupt practice committed in the interest of the returned candidate or by the improper reception, refusal or rejection of any vote or the reception of any vote which is void is made out. Merely on the ground that the Returning Officer provided assistance to 8 members after due compliance of the provisions of the Act and the Rules and only illustration was given that some of the elector has deliberately shown their ballot paper to the Deputy Chief Whip of the Congress Party. On this ground only the election petition cannot be said to be maintainable.

Since the election petition is not filed on the ground of any corrupt practice, therefore, in view of the judgment of Navrang Singh Vs. Bhanwar Singh & Ors., Samant N. Balakrishna Vs. George Fernandez and Ors. Ram Sewak Yadav Vs. Hussain Kamil Kidwai & Ors. Dr. Jagjit Singh Vs. Giani Kartar Singh & Ors. and mainly in the case of Ram Sevak Yadav Vs. Hussain Kamil Kidwai & Ors. wherein the Hon'ble Supreme Court has held that an order for inspection cannot be supported by vague pleas not supported by material facts or to fish out evidence. "But a mere allegation that the petitioner suspects or believes that there has been an improper reception, refusal or rejection of votes, will not be sufficient to support an order for inspection".

The same view has been taken in the case of Navrang Singh Vs. Bhanwar Singh & Ors. (Supra) and other cases referred hereinabove.

After going through the ratio decided by the Hon'ble Supreme Court as per the provisions of Section 100, I am of the view that the petitioner is unable to make out the case as to how the result of the election of the returned candidate was materially affected.

Upon careful perusal of the judgments referred by the petitioner with relation to the petition to be read as a whole as held by the Supreme Court in the case of Udhav Singh Vs. Madhav Rao Scindia, Mohan Vs. Bhairon Singh Shekhawat, Mahendra Pal Vs. Ram Dass Malenger & Ors., I accept the plea of the petitioner that the election petition to be read as a whole but even by reading election petition as a whole the petitioner fails to make out any case as to how the result of the election of the returned candidate was materially affected.

So far as the application moved on behalf of the respondents under Order 6 Rule 16 of the Code of Civil Procedure for striking out the pleadings, I am not inclined to strike out the pleadings on the reason stated in the application and therefore, the application stands rejected.

Having head on the point of the objection raised regarding verification, I am not convinced with the

arguments advanced on behalf of the respondents. Since the petitioner has properly verified the contents of the election petition and also submit the affidavit in view of the provisions of the law, the objection of the respondents does not survive and the plea of dismissing the election petition on this ground alone is herewith rejected.

So far as the secrecy of ballot paper the petitioner placed reliance on the case of Jagjit Singh Vs. Kartar Singh, Chandra Singh Vs. Ch. Shiv Ram Verma & Ors. and S. Baldev Singh Vs. Teja Singh Swatantra & Ors. wherein the Hon'ble Supreme Court has held that importance of secrecy of ballot paper cannot be ignored. As already discussed hereinabove, the relevant rule for maintaining the secrecy is Rule 39 and 54 and I am of the view that the petitioner is not able to establish this fact that as to how the secrecy of ballot paper has not been maintained. On the other hand the Presiding Officer is acted fairly while cancelling the vote of Durga Prasad Agrawal observing that he did not maintain the secrecy.

As the Presiding Officer has acted fairly and corrupt practice has not been pleaded by the petitioner, in such circumstance it cannot be presumed that the Presiding Officer has not acted fairly and not cared to maintain the secrecy of voting by electors within polling station. Thus in view of the ratio decided in the case of Jagjit Singh Vs. Kartar Singh (Supra) the importance of the secrecy of ballot paper was not ignored by the Presiding Officer.

As per the ratio decided by the Hon'ble Supreme Court in the aforesaid judgments, the importance of secrecy of ballot paper since not been ignored by the Presiding Officer and the petitioner is not able to make out his case as to how the result of the election of the returned candidate was materially affected.

Thus in view of the aforesaid discussions, the election petition stands dismissed as the petitioner has failed to formulate the grounds as stipulated under Section 100 of the Representation of the People Act, 1951.

(K. S. RATHORE, J.)

[No. 82/CS-RJ/1/2000/2008]

By Order,

K. AJAYKUMAR, Secy.

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